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Sequence Number: 03-11-16  
 Notice ID(s): 2491  
 File Date: 3/23/16

# Notice of Rulemaking Hearing

*Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.*

<b>Agency/Board/Commission:</b>	Tennessee Department of Mental Health and Substance Abuse Services
<b>Division:</b>	Office of Licensure
<b>Contact Person:</b>	Kurt Hippel, Director, Office of Legislation and Rules
<b>Address:</b>	Andrew Jackson Building, 5 <sup>th</sup> Floor 500 Deaderick Street Nashville, TN 37243
<b>Phone:</b>	615-532-6520
<b>Email:</b>	Kurt.Hippel@tn.gov

*Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:*

<b>ADA Contact:</b>	Gwen Hamer
<b>Address:</b>	Andrew Jackson Building, 6 <sup>th</sup> Floor 500 Deaderick Street Nashville, TN 37243
<b>Phone:</b>	615-532-6510
<b>Email:</b>	Gwen.Hamer@tn.gov

**Hearing Location(s)** (for additional locations, copy and paste table)

Address 1:	Andrew Jackson Building, Ground Floor Hearing Room		
Address 2:	500 Deaderick Street		
City:	Nashville		
Zip:	37243		
Hearing Date :	05/19/2016		
Hearing Time:	9:30 a.m.	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

**Additional Hearing Information:**

Please allow enough time to go through security upon entry to the building. Identification is required.

**Revision Type (check all that apply):**

- Amendment
- New
- Repeal

**Rule(s)** (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only **ONE** Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
0940-05-06	Minimum Program Requirements for All Services and Facilities

<b>Rule Number</b>	<b>Rule Title</b>
0940-05-06-.01	Governance Requirements for All Services and Facilities
0940-05-06-.02	Policies and Procedures for All Services and Facilities
0940-05-06-.03	Financial Management for All Services and Facilities
0940-05-06-.04	Personnel Requirements for All Services and Facilities
0940-05-06-.05	Individual Client Record Requirements for All Services and Facilities
0940-05-06-.06	Client Rights in All Services and Facilities
0940-05-06-.07	Modification or Limitation of All Clients' Rights
0940-05-06-.08	Modification or Limitation of an Individual Client's Rights
0940-05-06-.09	Services or Facilities Providing Home and Community Based Services
0940-05-06-.10	Reserved

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

0940-05-06-.01 Governance Requirements for All Services and Facilities.

- (1) The governing body must ensure that the facility complies with all applicable federal, state, and local laws, ordinances, rules, and regulations.
- (2) The governing body must ensure that the facility is administered and operated in accordance with written policies and procedures.
- (3) The governing body must exercise general direction over the facility and establish policies governing the operation of the facility and the welfare of the individuals served.
- (4) The governing body must designate an individual responsible for the operation of the facility.
- (5) The governing body must ensure that the licensed facility serves only persons whose placement will not cause the facility to violate its licensed status and capacity based on the facility's distinct licensure category, the facility's life safety occupancy classification, and the required staffing ratios, if any.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-304, 33-2-405 and 33-2-407.

0940-05-06-.02 Policies and Procedures for All Services and Facilities.

- (1) The governing body must ensure that a written policies and procedures manual is maintained. The manual must include the following elements:
  - (a) A description of each facility service provided by the licensee. The description must include the hours of operation and admission and discharge criteria and rules for service recipients, if any;
  - (b) An organizational chart or a statement which clearly shows or describes the lines of authority between the governing body, the chief executive officer, and the staff;
  - (c) Policies and procedures which ensure that someone is delegated the authority to act in the absence of the individual responsible for the operation of the facility;
  - (d) A schedule of fees currently charged to the client for all services provided by the licensee, including a refund policy. The schedule shall include:
    1. The fee or fees for each service, including any additional charges for services not covered by the basic service fee;
    2. The process by which licensee will apply any governmental or other funds or donations to the fee or fees for services. This may include, but not be limited to, use of a client's food stamps as payment for his or her meals; use of federal, state or other funds or donations to finance all or part of the client's cost for services; or payments made to the agency for a client's participation in an employment or rehabilitation program to finance the cost of services provided; and
    3. The total cost of services to the client.
  - (e) A statement of client rights and the grievance procedures to be followed when a suspected violation of client rights has been reported. This statement shall, at a minimum, include those client rights found in Rule 0940-05-06-.06;
  - (f) Policies and procedures which ensure the confidentiality of client information and which include the following provisions:

1. The facility staff must comply with applicable confidentiality laws and regulations (e.g. T.C.A. § 33-3-104(10); federal alcohol and drug regulations found at 42 C.F.R. Part 2);
  2. The client must not be required to make public statements which acknowledge gratitude to the licensee or for the licensee's facility services;
  3. The client must not be required to perform in public gatherings; and,
  4. Identifiable photographs of the client must not be used without the written and signed consent of the client or the client's guardian.
- (g) A medication administration policy and control procedures for facilities involved in the administration of medication to clients or facilities that supervise the self-administration of medication by the client;
- (h) The plans and procedures to be followed in the event of fire evacuation and natural disaster emergencies;
- (i) The plans and procedures to be followed in the event of an emergency involving client care which will provide for emergency transportation of clients, emergency medical care, and staff coverage in such events;
- (j) A policy which prohibits clients, except those who may be certified by the Department as peer or family support specialists and who are working at a facility in that capacity, from having any of the following responsibilities:
1. Responsibility for the care of other clients;
  2. Responsibility for the supervision of other clients unless on-duty/on-site staff are present; and,
  3. Responsibilities requiring access to confidential information.
- (k) Policies and procedures to be followed in the reporting and investigation of suspected or alleged abuse, neglect, or other critical incidents, whether perpetrated by or on the client by staff, other clients or outside parties. The procedures must include provisions for corrective action, if any, to be taken as a result of such reporting and investigation. These procedures shall also include provisions for reporting incidents or allegations to the department and, when necessary other appropriate state agencies and local law enforcement;
- (l) Policies and procedures which ensure that volunteers, if used by the facility, are in a supportive capacity and are under the supervision of appropriate designated staff members. A record should be maintained on each volunteer which shall include the volunteer's status on the Tennessee Sexual Offender Registry (Sex Offender Registry). A volunteer included on either the Abuse Registry or the Sex Offender registry shall not work in an agency providing services to vulnerable adults or children. It is recommended that the volunteer's record also include a criminal background check and references.
- (m) Policies and procedures which govern the use of client behavior-management techniques, if used by the facility;
- (n) A policy regarding the use of human subjects in research, if the facility is involved or planning to be involved in such research, which includes procedures for the following:
1. Identification of subjects, projects and staff;
  2. Provisions to protect the personal and civil rights of the subjects;
  3. Obtaining the consent of the subject involved;

4. Assurance that all research projects are conducted under the direction and supervision of professional staff qualified by education and experience to conduct research;
  5. Emergency guidelines for problems that may develop during research activities; and.
  6. Appointment of a facility representative to act as a coordinator of the research activities.
- (o) Policies and procedures for ensuring that employees and volunteers comply with procedures for detection, prevention and reporting of infectious and communicable diseases to the Tennessee Department of Health;
  - (p) A policy ensuring that employees and volunteers practice infection control procedures and standard precautions to protect the service recipient from infectious diseases;
  - (q) Policies and procedures regarding coordination of care with the client's other health, mental health, social, educational and residential service providers;
  - (r) Policies and procedures describing the process by which the licensee will comply with Rule 0940-05-06-.03 Financial Management of All Services and Facilities, including process by which the client or client's representative may register a complaint with the licensee to address the licensee's holding and disbursement of client's funds or property;
  - (s) Policies and procedures that address inappropriate relationships of a business, social, professional, romantic and sexual nature between the client and the licensee, its staff and/or volunteers; and
  - (t) Policies and procedures that address sanctions against an employee for violations of the licensee's policies and procedures and a process by which a complaint or grievance may be registered with the licensee.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-302, 33-2-304, 33-2-405 and 33-2-407.

0940-05-06-.03 Financial Management of All Services and Facilities.

- (1) The licensee holding or receiving funds or property for the service recipient as trustee or representative payee will adhere to all laws, state and federal, that govern his fiduciary position and relation to the client. A licensee may not retaliate against an employee, volunteer or other individual who reports a violation of the licensee's fiduciary obligation to the client.
- (2) The licensee shall prohibit staff, volunteers and proprietors from soliciting or borrowing money or property from clients.
- (3) The licensee shall ensure that all money received, held and/or disbursed on behalf of the client is for the strict, personal benefit of the client.
- (4) The licensee shall not mix funds with those of the client. The licensee shall maintain a separate account in a federally insured financial institution for the deposit and/or disbursement of client funds.
- (5) The licensee shall not take funds or property of the client for the licensee's personal or organizational use or gain.
- (6) The licensee shall maintain a written account of all monies received or disbursed on behalf of the client. No less than annually the licensee shall provide the client or the client's legal representative a report of all funds held and disbursed on behalf of the client.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-405 and 33-2-407.

0940-05-06-.04 Personnel Requirements for All Services and Facilities.

- (1) A job description must be maintained which includes the employment requirements and the job responsibilities for each facility staff position.
- (2) A personnel record must be maintained which verifies that each employee meets their respective employment requirements for the staff position held. Included in the employee's personnel records shall be evidence of a criminal background check as specified in T.C.A. § 33-2-1202; the employee's status on the Tennessee Elderly and Vulnerable Abuse Registry maintained by the Department of Health; and the employee's status on the Tennessee Sexual Offender Registry; the employee's date of birth; social security number; and records of any disciplinary action.
- (3) Annual training and development activities that assist the staff in meeting the needs of the clients. All direct care staff shall receive training in fire evacuation procedures. The agency shall document all training and development activities in which an employee participated in the employee's personnel records.
- (4) Training and development activities which are appropriate in assisting volunteers (if used by the facility) in implementing their assigned duties must be provided for each volunteer. The provision of such activities must be evidenced by documentation in the facility's records.
- (5) Direct-services staff members must be competent persons aged eighteen (18) years of age or older.
- (6) An employee's professional license or certification, including, but not limited to, certification as a peer or family support specialist, as required by the job description or State law.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-405 and 33-2-407.

0940-05-06-.05 Individual Client Record Requirements for All Services and Facilities.

The governing body must ensure that an individual record is maintained, in electronic or hard copy format, for each client being served and which minimally includes the following information:

- (1) The name and social security number of the client;
- (2) The address of the client or, for residential treatment programs, a permanent or previous address;
- (3) The telephone number of the client;
- (4) The sex of the client;
- (5) The date of the client's birth;
- (6) The date of the client's admission to the facility;
- (7) The source of the client's referral to the facility;
- (8) If applicable, legal documents affirming that the client has a court-appointed legal representative and the name, address and telephone number of the legal representative;
- (9) The name, address, and telephone number of a family representative and/or an emergency contact person;
- (10) If the facility charges fees for its services, a fee agreement as described in Rule 0940-05-06-.02(d), dated, completed and signed by the client (or the client's legal representative) prior to provision of any services other than emergency services. The licensee should complete a new fee agreement when there is a change in the amount of fees, the services provided, or additional charges for which the client is responsible are incurred.

- (11) When appropriate, informed, signed and dated consent and authorization forms for the release or obtaining of information from the client. These forms shall be in compliance with state and federal confidentiality laws and include at least the following information:
  - (a) Name and title of the person or organization to or from who disclosure is to be made;
  - (b) The signature of the client or the client's legal representative;
  - (c) The purpose of the disclosure;
  - (d) The extent and nature of information to be disclosed;
  - (e) A statement that the content is subject to revocation at any time except to the extent that action has already been taken in reliance thereon and a specified date, event or condition upon which the consent will expire without express revocation; and
  - (f) The date on which the consent is signed.
- (12) Documentation that the client or someone legally acting on behalf of the client has been informed of the client's rights and responsibilities and of the facility's general rules affecting the client.
- (13) A written account of all monies received or disbursed on behalf of the client and a copy of the annual report on the use and disbursement of client funds as required by 0940-05-06-.03(6).

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-304, 33-2-405 and 33-2-407.

0940-05-06-.06 Client Rights in All Services and Facilities.

- (1) The following rights shall be afforded to all clients by all licensees and are not subject to modification.
  - (a) Clients have the right to be fully informed before or upon admission about their rights and responsibilities and about any limitation on these rights imposed by rules of the facility. The facility must ensure that the client is given information about his or her rights that shall include at least the following:
    - 1. A statement of the specific rights guaranteed the client by these rules and applicable state and federal laws;
    - 2. A description of the facility's complaint and grievance procedures;
    - 3. A listing of all available advocacy services; and
    - 4. A copy of all general facility rules and regulations for clients.

The information must be presented in a manner or format that promotes understanding by clients of their rights and an opportunity must be given to clients to ask questions about the information. If a client who is unable to understand this information at the time of admission later becomes able to do so, the information must be presented to the client at that time. If a client is likely to continue indefinitely to be unable to understand this information, the facility must promptly attempt to provide the required information to a parent, guardian, or other appropriate person or agency responsible for protecting the rights of the client;
  - (b) Clients have the right to voice grievances to staff of the facility, to the licensee, and to outside representatives of their choice with freedom from restraint, interference, coercion, discrimination or reprisal;
  - (c) Clients have the right to be treated with consideration, respect and full recognition of their

- (d) dignity and individuality; Clients have the right to be protected by the licensee from neglect; from physical, verbal and emotional abuse (including corporal punishment); and from all forms of misappropriation and/or exploitation;
  - (e) Clients have the right to be assisted by the facility in the exercise of their civil rights;
  - (f) Clients have the right to be free of any requirement by the facility that they perform services which are ordinarily performed by facility staff;
  - (g) If residential services are provided, clients must be allowed to send personal mail unopened and to receive mail and packages which may be opened in the presence of staff when there is reason to believe that the contents thereof may be harmful to the client or others;
  - (h) Clients have the right to privacy while receiving services;
  - (i) Clients have the right to have their personal information kept confidential in accordance with state and federal confidentiality laws;
  - (j) Clients have the right to ask the facility to correct information in their records. If the facility refuses, the client may include a written statement in the records of the reasons they disagree;
  - (k) Clients have the right to be informed about their care in a language they understand; and
  - (l) Clients have the right to vote, make contracts, buy or sell real estate or personal property, or sign documents, unless the law or a court removes these rights.
- (2) The following rights must be afforded to all clients by all licensed facilities unless modified in accordance with rules 0940-05-06.07 or 0940-05-06-.08:
- (a) Clients have the right to participate in the development of the client's individual program or treatment plans and to receive sufficient information about proposed and alternative interventions and program goals to enable them to participate effectively;
  - (b) Clients have the right to participate fully, or to refuse to participate, in community activities including cultural, educational, religious, community services, vocational and recreational activities;
  - (c) If residential services are provided, clients must be allowed to have free use of common areas in the facility with due regard for privacy, personal possessions, and the rights of others;
  - (d) Clients have the right to be accorded privacy and freedom for the use of bathrooms when needed;
  - (e) Clients shall be permitted to retain and use personal clothing and possessions including books, pictures, games, toys, radios, arts and crafts materials, religious articles, toiletries, jewelry and letters;
  - (f) If residential services are provided and if married clients reside in the facility, privacy for visits by spouses must be ensured, and if both spouses are clients residing in the facility, they must be permitted to share a room;
  - (g) If residential services are provided, clients have the right to associate and communicate privately with persons of their choice including receiving visitors at reasonable hours; and
  - (h) If residential services are provided, persons supported have the right to be given privacy and freedom in the use of their bedroom/sleeping area.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-405, 33-2-407, and 33-3-113.

0940-05-06-.07 Modification or Limitation of All Clients' Rights.

- (1) The rights of all clients in a facility may only be modified or limited under the following conditions:
  - (a) It is demonstrated and documented that a legitimate program purpose cannot reasonably be achieved without such modification or limitation;
  - (b) No modification or limitation may be made solely for the convenience of facility staff or be more stringent than is necessary to achieve the demonstrated purpose;
  - (c) Clients or representatives of clients, as appropriate, must be fully informed of proposed facility rules, policies or procedures modifying or limiting client rights, and of the reasons therefore and must be given an opportunity to object; to propose alternatives; and to consult with family, friends and/or advocacy agencies prior to their implementation;
  - (d) Facility rules, policies or procedures which modify or limit client rights must be in writing and posted in a conspicuous place. If the clients receive services in their homes, they and/or their legally-appointed representative shall be provided with a written copy of the proposed rules, policies or procedures; and
  - (e) The facility is not a Medicaid-reimbursed home and community based service (HCBS) provider required to comply with the federal home-based and community-based setting final rule, published in the Federal Register at 79 FR 2947 (January 16, 2014).

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-405 and 33-2-407.

0940-05-06-.08 Modification or Limitation of an Individual Client's Rights.

- (1) The rights of an individual client in a facility may only be modified or limited under the following conditions:
  - (a) It is demonstrated and documented that such modification or limitation is necessary because of the individual client's physical or mental condition or inappropriate behavior;
  - (b) To achieve a legitimate goal in the client's individual program plan;
  - (c) No modification or limitation may be made solely for the convenience of staff or be more stringent than is necessary;
  - (d) The client and/or the client's legally-appointed representative, as appropriate, must be fully informed of the proposed limitation or modification and must be given an opportunity to object, to propose alternatives, and to consult with family, friends, and/or advocacy agencies prior to implementation of the modifications or limitations;
  - (e) Any modifications or limitations and the reasons therefore must be documented in the client's record; and
  - (f) The facility is not a Medicaid-reimbursed home and community based service (HCBS) provider required to comply with the federal home-based and community-based setting final rule, published in the Federal Register at 79 FR 2947 (January 16, 2014).

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-405 and 33-2-407.

0940-05-06-.09 Services or Facilities Providing Home and Community Based Services.

A facility contracted to provide medicaid-reimbursed home- and community-based services (HCBS) is required to

comply with the federal home-based and community-based setting final rule, published in the Federal Register at 79 FR 2947 (January 16, 2014).

- (1) Medicaid-reimbursed individuals receiving HCBS services shall be afforded the rights referenced in 42 C.F.R. §441.301(c)(4) of the HCBS Settings Rule.
- (2) The clients of an agency contracted to provide medicaid-reimbursed HCBS residential services have the right to associate and communicate privately with persons of their choice including receiving visitors at any time.
- (3) The rights of persons supported in a facility receiving HCBS services may only be modified or limited as provided in the federal home-based and community-based setting final rule, published in the Federal Register at 79 FR 2947 (January 16, 2014).
  - (a) Any modifications or limitations must be documented in the client's record or service plan and must:
    1. Identify a specific and individualized assessed need;
    2. Document the positive interventions and supports used prior to any modifications to the person-centered service plan;
    3. Document less intrusive methods of meeting the need that have been tried but did not work;
    4. Include a clear description of the condition that is directly proportionate to the specific assessed need;
    5. Include regular collection and review of data to measure the ongoing effectiveness of the modification;
    6. Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated;
    7. Include the informed consent of the client or legal representative; and
    8. Include an assurance that interventions and supports will cause no harm to the client.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-405 and 33-2-407.

0940-05-06-.10 Reserved.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-405 and 33-2-407.

#### Repeals

Chapter 0940-05-06 Minimum Program Requirements for All Facilities is repealed in its entirety.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-405 and 33-2-407.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: 3/22/16

Signature: [Signature]

Name of Officer: Cynthia Tyler, Esq.

Title of Officer: Interim General Counsel

Subscribed and sworn to before me on: March 22, 2016

Notary Public Signature: Rhonda Finchum

My commission expires on: May 6, 2019

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Filed with the Department of State on: 3/23/16

[Signature]  
Tre Hargett  
Secretary of State



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<b>Agency/Board/Commission:</b>	Tennessee Department of Mental Health and Substance Abuse Services
<b>Division:</b>	Office of Licensure
<b>Contact Person:</b>	Kurt Hippel, Director, Office of Legislation and Rules
<b>Address:</b>	Andrew Jackson Building, 5 <sup>th</sup> Floor 500 Deaderick Street Nashville, TN 37243
<b>Phone:</b>	615-532-6520
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0940-05-06-.07	Modification or Limitation of Rights of All Clients' <u>Rights by Facility Rules, Policies, or Procedures</u>
0940-05-06-.08	Modification or Limitation of an Individual Client's Rights
0940-05-06-.09	<u>Reserved Services or Facilities Providing Home and Community Based Services</u>
0940-05-06-.10	Reserved

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

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Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-304, 33-2-405 and 33-2-407.

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  - (b) An organizational chart of or a statement which clearly shows or describes the lines of authority between the governing body, the chief executive officer, and the staff;
  - (c) ~~A policy~~ Policies and procedures which ensure that someone is delegated the authority to act in the absence of the individual responsible for the operation of the facility;
  - (d) A schedule of fees, ~~if any,~~ currently charged to the client for all services provided by the licensee, including a refund policy. The schedule shall include:
    1. The fee or fees for each service, including any additional charges for services not covered by the basic service fee;
    2. The process by which licensee will apply any governmental or other funds or donations to the fee or fees for services. This may include, but not be limited to, use of a client's food stamps as payment for his or her meals; use of federal, state or other funds or donations to finance all or part of the client's cost for services; or payments made to the agency for a client's participation in an employment or rehabilitation program to finance the cost of services provided; and
    3. The total cost of services to the client.
  - (e) A statement of client rights and the grievance procedures to be followed when a suspected violation of client rights has been reported. This statement shall, at a minimum, include those client rights found in Rule 0940-05-06-.06;
  - (f) ~~A policy and procedures~~ Policies and procedures which ensure the confidentiality of client information and which include the following provisions:

1. The facility staff must comply with applicable confidentiality laws and regulations (e.g. T.C.A. § 33-3-104(10); federal alcohol and drug regulations found at 42 C.F.R. Part 2);
  2. The client must not be required to make public statements which acknowledge gratitude to the licensee or for the licensee's facility services;
  3. The client must not be required to perform in public gatherings; and,
  4. Identifiable photographs of the client must not be used without the written and signed consent of the client or the client's guardian.
- (g) A medication administration policy and control procedures for facilities involved in the administration of medication to clients or facilities that supervise the self-administration of medication by the client;
- (h) The plans and procedures to be followed in the event of fire evacuation and natural disaster emergencies;
- (i) The plans and procedures to be followed in the event of an emergency involving client care which will provide for emergency transportation of clients, emergency medical care, and staff coverage in such events;
- (j) A policy which prohibits clients, except those who may be certified by the Department as peer or family support specialists and who are working at a facility in that capacity, from having any of the following responsibilities:
1. Responsibility for the care of other clients;
  2. Responsibility for the supervision of other clients unless on-duty/on-site staff are present; and,
  3. Responsibilities requiring access to confidential information.
- (k) ~~A policy~~ Policies and procedures to be followed in the reporting and investigation of suspected or alleged abuse, neglect of clients, or other critical incidents, whether perpetrated by or on the client by staff, other clients or outside parties. The procedures must include provisions for corrective action, if any, to be taken as a result of such reporting and investigation. These procedures shall also include provisions for reporting incidents or allegations to the department and, when necessary other appropriate state agencies and local law enforcement;
- (l) ~~A policy~~ Policies and procedures which ensure that volunteers, if used by the facility, are in a supportive capacity and are under the supervision of appropriate designated staff members. A record should be maintained on each volunteer which shall include the volunteer's status on the Tennessee Sexual Offender Registry (Sex Offender Registry). A volunteer included on either the Abuse Registry or the Sex Offender registry shall not work in an agency providing services to vulnerable adults or children. It is recommended that the volunteer's record also include a criminal background check and references.
- (m) ~~A policy~~ Policies and procedures which govern the use of client behavior-management techniques, if used by the facility;
- (n) A policy regarding the use of human subjects in research, if the facility is involved or planning to be involved in such research, which includes procedures for the following:
1. Identification of subjects, projects and staff;
  2. Provisions to protect the personal and civil rights of the subjects;
  3. Obtaining the consent of the subjects involved;

4. Assurance that all research projects are conducted under the direction and supervision of professional staff qualified by education and experience to conduct research;
5. Emergency guidelines for problems that may develop during research activities; and.
6. Appointment of a facility representative to act as a coordinator of the research activities.

~~(o) Policies and procedures for ensuring that employees and volunteers comply with procedures for detection, prevention and reporting of infectious and communicable diseases to the Tennessee Department of Health;~~

~~(p) A policy ensuring that employees and volunteers practice infection control procedures and standard precautions to protect the service recipient from infectious diseases;~~

~~(q) Policies and procedures regarding coordination of care with the client's other health, mental health, social, educational and residential service providers;~~

~~(r) Policies and procedures describing the process by which the licensee will comply with Rule 0940-05-06-.03 Financial Management of All Services and Facilities, including process by which the client or client's representative may register a complaint with the licensee to address the licensee's holding and disbursement of client's funds or property;~~

~~(s) Policies and procedures that address inappropriate relationships of a business, social, professional, romantic and sexual nature between the client and the licensee, its staff and/or volunteers; and~~

~~(t) Policies and procedures that address sanctions against an employee for violations of the licensee's policies and procedures and a process by which a complaint or grievance may be registered with the licensee.~~

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-302, 33-2-304, 33-2-405 and 33-2-407.

0940-05-06-.03 Financial Management of All Services and Facilities.

- (1) The licensee holding or receiving funds or property for the service recipient as trustee or representative payee will adhere to all laws, state and federal, that govern his fiduciary position and relation to the client. A licensee may not retaliate against an employee, volunteer or other individual who reports a violation of the licensee's fiduciary obligation to the client.
- (2) The licensee ~~must~~ shall prohibit staff, volunteers and proprietors from soliciting or borrowing money or property from clients.
- (3) The licensee ~~must~~ shall ensure that all money received, held and/or disbursed on behalf of the client is in the client's behalf if for the strict, personal benefit of the client.
- (4) The licensee ~~must~~ shall not mix funds with those of the client. The licensee shall maintain a separate account in a federally insured financial institution for the deposit and/or disbursement of client funds.
- (5) The licensee ~~must~~ shall not take funds or property of the client for the facility's own licensee's personal or organizational use or gain.
- ~~(6) The licensee must provide an annual reporting to the client or the client's parent or guardian of the client's funds being held and disbursed by the facility.~~
- (6) The licensee shall maintain a written account of all monies received or disbursed on behalf of the client. No less than annually the licensee shall provide the client or the client's legal representative a report of all funds held and disbursed on behalf of the client.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-405 and 33-2-407.

0940-05-06-.04 Personnel Requirements for All Services and Facilities.

- (1) A job description must be maintained which includes the employment requirements and the job responsibilities for each facility staff position.
- (2) A personnel record must be maintained which verifies that each employee meets ~~their~~ their respective employment requirements for the staff position held. Included in the employee's personnel records shall be evidence of a criminal background check as specified in T.C.A. § 33-2-1202; the employee's status on the Tennessee Elderly and Vulnerable Abuse Registry maintained by the Department of Health; and the employee's status on the Tennessee Sexual Offender Registry; the employee's date of birth; social security number; and records of any disciplinary action.
- (3) Annual Training training and development activities which that are appropriate in assisting assist the staff in meeting the needs of the clients, being served must be provided for each staff member. All direct care staff shall receive training in fire evacuation procedures. The agency shall document all training and development activities in which an employee participated in the employee's personnel records. The provision of such activities must be evidenced by documentation in the facility records.
- (4) Training and development activities which are appropriate in assisting volunteers (if used by the facility) in implementing their assigned duties must be provided for each volunteer. The provision of such activities must be evidenced by documentation in the facility's records.
- (5) Direct-services staff members must be competent persons aged eighteen (18) years of age or older.
- (6) An employee's professional license or certification, including, but not limited to, certification as a peer or family support specialist, as required by the job description or State law.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-405 and 33-2-407.

0940-05-06-.05 Individual Client Record Requirements for All Services and Facilities.

The governing body must ensure that an individual client record is maintained, in electronic or hard copy format, for each client being served and which minimally includes the following information:

- (1a) The name and social security number of the client;
- (2b) The address of the client or, for residential treatment programs, a permanent or previous address;
- (3e) The telephone number of the client;
- (4d) The sex of the client;
- (5e) The date of the client's birth;
- (6f) The date of the client's admission to the facility;
- (7g) The source of the client's referral to the facility;
- (8h) If applicable, legal documents affirming that the client has a court-appointed legal representative and the name, address and telephone number of the legal representative;
- (9) The name, address, and telephone number of a family representative and/or an emergency contact person;

(10i) If the facility charges fees for its services, a written fee agreement as described in Rule 0940-05-06-.02(d), dated, completed and signed by the client (or the client's legal representative) prior to provision of any services other than emergency services. The licensee should complete a new fee agreement when there is a change in the amount of fees, the services provided, or additional charges for which the client is responsible are incurred. This agreement must include at least the following information:

1. The fee or fees to be paid by the client;
2. The services covered by such fees; and
3. Any additional charges for services not covered by the basic service fee;

(11j) When Appropriate, informed, signed and dated consent and authorization forms for the release or obtainment obtaining of information from the client. These forms shall be in compliance with state and federal confidentiality laws and include at least the following information:

- (a) Name and title of the person or organization to or from who disclosure is to be made;
- (b) The signature of the client or the client's legal representative;
- (c) The purpose of the disclosure;
- (d) The extent and nature of information to be disclosed;
- (e) A statement that the content is subject to revocation at any time except to the extent that action has already been taken in reliance thereon and a specified date, event or condition upon which the consent will expire without express revocation; and
- (f) The date on which the consent is signed, and

(12k) Documentation that the client or someone legally acting on behalf of the client has been informed of the client's rights and responsibilities and of the facility's general rules affecting the client.

(13) A written account of all monies received or disbursed on behalf of the client and a copy of the annual report on the use and disbursement of client funds as required by 0940-05-06-.03(6).

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-304, 33-2-405 and 33-2-407.

0940-05-06-.06 Client Rights in All Services and Facilities.

- (1) The following rights must shall be afforded to all clients by all licensees and are not subject to modification.
  - (a) Clients have the right to be fully informed before or upon admission about their rights and responsibilities and about any limitation on these rights imposed by rules of the facility. The facility must ensure that the client is given information about his or her rights oral and/or written rights information that includes that shall include at least the following:
    1. A statement of the specific rights guaranteed the client by these rules and applicable state and federal laws;
    2. A description of the facility's complaint and grievance procedures;
    3. A listing of all available advocacy services; and
    4. A copy of all general facility rules and regulations for clients.

The information must be presented in a manner or format that promotes

understanding by clients of their rights and an opportunity must be given to clients to ask questions about the information. If a client who is unable to understand this information at the time of admission later becomes able to do so, the information must be presented to the client at that time. If a client is likely to continue indefinitely to be unable to understand this information, the facility must promptly attempt to provide the required information to a parent, guardian, or other appropriate person or agency responsible for protecting the rights of the client;

- (b) Clients have the right to voice grievances to staff of the facility, to the licensee, and to outside representatives of their choice with freedom from restraint, interference, coercion, discrimination or reprisal;
- (c) Clients have the right to be treated with consideration, respect and full recognition of their dignity and individuality;
- (d) Clients have the right to be protected by the licensee from neglect; from physical, verbal and emotional abuse (including corporal punishment); and from all forms of misappropriation and/or exploitation;
- (e) Clients have the right to be assisted by the facility in the exercise of their civil rights;
- (f) Clients have the right to be free of any requirement by the facility that they perform services which are ordinarily performed by facility staff; and
- (g) If residential services are provided, clients must be allowed to send personal mail unopened and to receive mail and packages which may be opened in the presence of staff when there is reason to believe that the contents thereof may be harmful to the client or others;
- (h) Clients have the right to privacy while receiving services;
- (i) Clients have the right to have their personal information kept confidential in accordance with state and federal confidentiality laws;
- (j) Clients have the right to ask the facility to correct information in their records. If the facility refuses, the client may include a written statement in the records of the reasons they disagree;
- (k) Clients have the right to be informed about their care in a language they understand; and
- (l) Clients have the right to vote, make contracts, buy or sell real estate or personal property, or sign documents, unless the law or a court removes these rights.

(2) The following rights must be afforded to all clients by all licensed facilities unless modified in accordance with rules 0940-05-06.07 or 0940-05-06-.08:

- (a) Clients have the right to participate in the development of ~~their~~ the client's individual ~~program~~ program or treatment plans and to receive sufficient information about proposed and alternative interventions and program goals to enable them to participate effectively;
- (b) Clients have the right to participate fully, or to refuse to participate, in community activities including cultural, educational, religious, community services, vocational and recreational activities;
- (c) If residential services are provided, clients must be allowed to have free use of common areas in the facility with due regard for privacy, personal possessions, and the rights of others;
- (d) ~~If residential services are provided, c~~Clients have the right to be accorded privacy and freedom for the use of bathrooms at all hours when needed;

- (e) Clients shall be permitted to retain and use personal clothing and possessions including books, pictures, games, toys, radios, arts and crafts materials, religious articles, toiletries, jewelry and letters;

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- ~~(e) If residential services are provided, clients have the right to be accorded privacy and freedom for the use of bathrooms at all hours;~~
- (f) If residential services are provided and if married clients reside in the facility, privacy for visits by spouses must be ensured, and if both spouses are clients residing in the facility, they must be permitted to share a room; and
- (g) If residential services are provided, clients have the right to associate and communicate privately with persons of their choice including receiving visitors at reasonable hours; and

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- (h) If residential services are provided, persons supported have the right to be given privacy and freedom in the use of their bedroom/sleeping area.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-405, 33-2-407, and 33-3-113.

0940-05-06-.07 Modification or Limitation of All Clients' Rights. All Clients by Facility Rules, Policies, or Procedures

- (1) The rights of all clients of in a facility may only be modified or limited under the following conditions:
  - (a) It is demonstrated and documented that a legitimate program purpose cannot reasonably be achieved without such modification or limitation;
  - (b) No modification or limitation may be made solely for the convenience of facility staff or be more stringent than is necessary to achieve the demonstrated purpose;
  - (c) Clients or representatives of clients, as appropriate, must be fully informed of proposed facility rules, policies or procedures modifying or limiting client rights, and of the reasons therefore and must be given an opportunity to object; to propose alternatives; and to consult with family, friends and/or advocacy agencies prior to their implementation; and
  - (d) Facility rules, policies or procedures which modify or limit client rights must be in writing and posted in a conspicuous place. If the clients receive services in their homes, they and/or their legally-appointed representative shall be provided with a written copy of the proposed rules, policies or procedures; and

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  - ~~(e) The facility is not a Medicaid-reimbursed home and community based service (HCBS) provider required to comply with the federal home-based and community-based setting final rule, published in the Federal Register at 79 FR 2947 (January 16, 2014).~~

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-405 and 33-2-407.

0940-05-06-.08 Modification or Limitation of an Individual Client's Rights.

- (1) The rights of an individual client in a facility may only be modified or limited under the following conditions:
  - (a) It is demonstrated and documented that such modification or limitation is necessary because of the individual client's physical or mental condition or inappropriate behavior;
  - (b) To achieve a legitimate goal in the client's individual program plan;
  - (c) No modification or limitation may be made solely for the convenience of staff or be more

stringent than is necessary;

- (d) The client and/or a representative of the client the client's legally-appointed representative, as appropriate, must be fully informed of the proposed limitation or modification and must be given an opportunity to object, to propose alternatives, and to consult with family, friends, and/or advocacy agencies prior to implementation of the modifications or limitations; and
- (e) Any modifications or limitations and the reasons therefore must be documented in the client's record; and Individual Program Plan.
- (f) The facility is not a Medicaid-reimbursed home and community based service (HCBS) provider required to comply with the federal home-based and community-based setting final rule, published in the Federal Register at 79 FR 2947 (January 16, 2014).

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-405 and 33-2-407.

0940-05-06-.09 Services or Facilities Providing Home and Community Based Services.

A facility contracted to provide medicaid-reimbursed home- and community-based services (HCBS) is required to comply with the federal home-based and community-based setting final rule, published in the Federal Register at 79 FR 2947 (January 16, 2014).

(1) Medicaid-reimbursed individuals receiving HCBS services shall be afforded the rights referenced in 42 C.F.R. §441.301(c)(4) of the HCBS Settings Rule.

(2) The clients of an agency contracted to provide medicaid-reimbursed HCBS residential services have the right to associate and communicate privately with persons of their choice including receiving visitors at any time.

(3) The rights of persons supported in a facility receiving HCBS services may only be modified or limited as provided in the federal home-based and community-based setting final rule, published in the Federal Register at 79 FR 2947 (January 16, 2014).

(a) Any modifications or limitations must be documented in the client's record or service plan and must:

1. Identify a specific and individualized assessed need;
2. Document the positive interventions and supports used prior to any modifications to the person-centered service plan;
3. Document less intrusive methods of meeting the need that have been tried but did not work;
4. Include a clear description of the condition that is directly proportionate to the specific assessed need;
5. Include regular collection and review of data to measure the ongoing effectiveness of the modification;
6. Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated;
7. Include the informed consent of the client or legal representative; and
8. Include an assurance that interventions and supports will cause no harm to the client.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-405 and 33-2-

407.

0940-05-06-.10 Reserved.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-405 and 33-2-407.

#### Repeals

Chapter 0940-05-06 Minimum Program Requirements for All Facilities is repealed in its entirety.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-405 and 33-2-407.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Name of Officer: E. Douglas Varney

Title of Officer: Commissioner

Subscribed and sworn to before me on: \_\_\_\_\_

Notary Public Signature: \_\_\_\_\_

My commission expires on: \_\_\_\_\_

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Filed with the Department of State on: \_\_\_\_\_

\_\_\_\_\_  
Tre Hargett  
Secretary of State